

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of Larry Wasnick

**FINDINGS OF FACT,
CONCLUSIONS AND
RECOMMENDATION FOR
SUMMARY DISPOSITION**

On July 17, 1996, the Minnesota Department of Commerce moved Administrative Law Judge George A. Beck for summary disposition of the above-entitled matter pursuant to Minn. Rule 1400.6600 (1995) and Minn. R. Civ. P. 56 (1994). No reply was submitted to the motion.

Assistant Attorney General Susan E. Damon, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130, represented the Minnesota Department of Commerce in connection with the motion. Respondent Larry Wasnick, 5306 - 70th Circle North, Brooklyn Center, Minnesota 55429, represents himself.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact David B. Gruenes, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, telephone (612) 296-6694, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case is whether Respondent Larry Wasnick has engaged in residential construction in violation of a Consent Order issued June 2, 1994, in In the Matter of A & W Builders, Inc., a Minnesota Corporation, Residential Building Contractor's License No. 7830, OAH Docket No. 8-1005-8477.

Based upon all of the files, records and proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On June 19, 1996, the Department of Commerce served Department of Commerce's Request for Admissions on Larry Wasnick (hereinafter "Respondent") by certified United States mail.

2. Respondent received the Department of Commerce's Request for Admissions on June 24, 1996.

3. Respondent failed to make a written answer within 10 days of receipt of Department of Commerce's Request for Admissions.

4. Respondent has not shown that there was a justifiable excuse for failing to respond to the Department of Commerce's Request for Admissions.

5. Respondent is not currently and has never been licensed as a residential building contractor or residential remodeler pursuant to Minn. Stat. § 326.83 et seq.

6. A & W Builders, Inc. was granted a license as a residential remodeler, pursuant to Minn. Stat. §§ 326.83 et seq., on September 17, 1992, until September 1, 1994, when its license was revoked.

7. Respondent was a co-owner, agent or managing employee of A & W Builders, Inc.

8. On December 22, 1993, the Commissioner of Commerce commenced an administrative action against A & W Builders, Inc. entitled In the Matter of A & W Builders, Inc., a Minnesota Corporation, Residential Building Contractor's License No. 7830, OAH Docket No. 8-1005-8477-2, by issuance of a Notice of and Order for Hearing and Order to Show Cause alleging violations of Minn. Stat. §§ 45.027, subds. 1a and 6, and 326.91, subd. 1(2)(4)(6) & (7).

9. On March 15, 1994, the Commissioner issued an Amended Notice of and Order for Hearing and Order to Show Cause in the administrative action against A & W Builders, Inc. The Amended Notice of and Order for Hearing and Order to Show Cause alleged additional violations of Minn. Stat. § 326.91, subd. 1(2) & (6) and also alleged violations of Minn. Stat. § 326.91, subd. 1(1) and (12).

10. The administrative matter referenced in the preceding paragraphs was settled via Consent Order issued by the Commissioner on June 2, 1994. Respondent, individually and in his capacity as managing employee of A & W Builders, Inc., signed a Consent to Entry of Order on June 2, 1994, in connection with the settlement.

11. Except as specifically authorized by paragraphs J and K of the June 2, 1994 Consent Order, Paragraph I of the Consent Order prohibits Respondent from acting or assuming to act as owner, officer, director, qualifying person or managing employee of,

or independent contractor for, any residential building contractor or remodeler licensed by the State of Minnesota and prohibits him from engaging in any aspect of the residential construction business in any jurisdiction subject to State of Minnesota licensure requirements from June 2, 1994 through August 31, 1996.

12. In or about September 1995, Respondent, using the alias "Tom Hedberg" and the business name "Lower Level Specialists," entered into a contract with Daniel and Suzette Furry to perform remodeling or construction at their home located at 13115 55th Avenue North, Plymouth, Minnesota 55442.

13. Lower Level Specialists is not currently and never has been licensed by the State of Minnesota as a residential building contractor or residential remodeler.

14. Pursuant to the above-referenced contract with Daniel and Suzette Furry, Respondent performed construction or remodeling work at Daniel and Suzette Furry's home from about September 1995 through February 1996.

15. The residential construction or remodeling performed by Respondent at the home of Daniel and Suzette Furry was not authorized under the terms of the June 2, 1994 Consent Order.

16. In 1995, Respondent, using the alias "Tom Hedberg" and the business name "Lower Level Specialists," performed residential construction or residential remodeling at the home of Mark and Julie Pedote, 13200 56th Avenue North, Plymouth, Minnesota 55442.

17. The residential construction or remodeling performed by Respondent at the home of Mark and Julie Pedote was not authorized under the terms of the June 2, 1994 Consent Order.

18. In 1995, Larry Wasnick, using the alias "Tom Hedberg" and the business name "Lower Level Specialists," performed residential construction or residential remodeling at the home of James and Susan Kmiec, 5605 Teakwood Lane, Plymouth, Minnesota 55442.

19. The residential construction or remodeling performed by Respondent at the home of James and Susan Kmiec was not authorized under the terms of the June 2, 1994 Consent Order.

20. The Department served its Motion for Summary Judgment on the Respondent personally and by mail on July 16, 1996. By a letter dated July 17, 1996, the Administrative Law Judge advised the Respondent that if he wished to submit a written reply to the motion, it would have to be filed on or before August 1, 1996. No reply or any other communication has been received from the Respondent.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. §§ 326.83-326.991, 14.50 and 45.027 (1994), as amended. The Notice of Hearing was, in all respects, proper and the Department has complied with all substantive and procedural requirements of law and rule.

2. The Department has given proper notice of its Motion for Summary Disposition in this matter as required by law.

3. Pursuant to Minn. Rule 1400.7300, subp. 5, the Department has the burden of proof to show, by a preponderance of the evidence, that Respondent has committed the violations alleged.

4. The June 2, 1994 Consent Order issued in In the Matter of A & W Builders, Inc., a Minnesota Corporation, Residential Building Contractor's License No. 7830, OAH Docket No. 8-1005-8477-2, is an "order related to the duties and responsibilities entrusted to the Commissioner" within the meaning of Minn. Stat. §§ 45.011 and 45.027, subd. 6 (1994), as amended.

5. The subject matter of the Department of Commerce's Request for Admissions is deemed admitted pursuant to Minn. Rule 1400.6800 by Respondent's failure to make written answer within ten days and failure to show that there was a justifiable excuse for failing to respond.

6. There is no genuine issue of material fact in this matter and the Department of Commerce is entitled to summary disposition as a matter of law.

7. The residential construction or remodeling performed by Respondent at the home of Daniel and Suzette Furry in 1995 and 1996 violated the terms of the June 2, 1994 Consent Order.

8. The residential construction or remodeling performed by Respondent at the home of Mark and Julie Pedote in 1995 violated the terms of the June 2, 1994 Consent Order.

9. The residential construction or remodeling performed by Respondent at the home of James and Susan Kmiec in 1995 violated the terms of the June 2, 1994 Consent Order.

10. Pursuant to Minn. Stat. § 45.027, subd. 6 (1994), as amended, the Commissioner may impose a civil penalty not to exceed \$2,000 for each of Respondent's violations of the June 2, 1994 Consent Order.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Commerce impose an appropriate civil penalty on Respondent.

Dated this 8th day of August 1996.

GEORGE A. BECK
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.